

12-31-2013

# State v. Easley Appellant's Supplemental Brief Dckt. 39710

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	NOS. 39710 & 39711
Plaintiff-Respondent,	)	
	)	TWIN FALLS COUNTY NOS.
	)	CR 2005-7711 & CR 2010-7265
v.	)	
	)	
KRYSTAL EASLEY,	)	APPELLANT'S SUPPLEMENTAL
	)	BRIEF
	)	
Defendant-Appellant.	)	

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF TWIN FALLS**

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**HONORABLE G. RICHARD BEVAN  
District Judge**

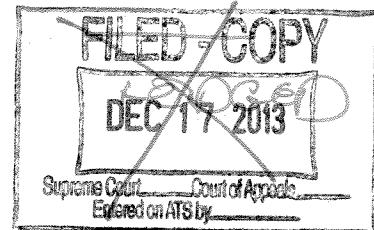
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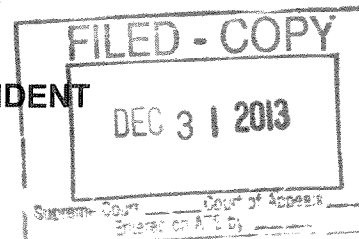
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## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of the Facts and Course of Proceedings .....	1
ISSUES PRESENTED ON APPEAL .....	2
ARGUMENT .....	3
Ms. Easley Did Not Waiver Her Right To Appeal In Either Case .....	3
CONCLUSION .....	5
CERTIFICATE OF MAILING .....	6

## TABLE OF AUTHORITIES

### Cases

<i>Oneida v. Oneida</i> , 95 Idaho 105 (1972) .....	4
<i>Phelps v. Blome</i> , 150 Neb. 547, 35 N.W.2d 93 (1948) .....	4
<i>Southern Indiana Power Co. v. Cook</i> , 182 Ind. 505, 107 N.E. 12 (1914) .....	4
<i>Speeth v. Fields</i> , 71 N.E.2d 149 (Ohio App.1946) .....	4
<i>State v. Straub</i> , 153 Idaho 882 (2013) .....	3
<i>State v. Thomas</i> , 146 Idaho 592 (2008) .....	3

### Rules

CR 11(d) .....	3
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### Additional Authorities

4 Am.Jur.2d, Appeal and Error s 240 (1962) .....	4
4 Am.Jur.2d, Appeal and Error s 241 (1962) .....	4

## STATEMENT OF THE CASE

### Nature of the Case

This supplemental brief is filed at the request of the Chief Justice and is necessary to address this Court's question raised at oral argument, pertaining to the question of whether Ms. Easley waived her appellate rights in these matters.

### Statement of the Facts and Course of Proceedings

The Statement of Facts and Course of Proceedings were previously articulated in the Appellant's Brief and are incorporated herein by reference.

## ISSUES

1. Did the Idaho Supreme Court deny Ms. Easley due process and equal protection when it denied her Motion to Augment with the requested transcripts?<sup>1</sup>
2. Does the Fifth Judicial District's practice, which allows the prosecutor to prevent a district court from considering the placement of a defendant into mental health court violate Idaho's separation of powers doctrine?
3. Does the Fifth Judicial District's practice, which allows the prosecutor to prevent a district court from considering a defendant as a candidate for mental health court violate the constitutional requirement that all courts of the same class have uniform judicial powers, procedures, and practices?
4. Did the district court abuse its discretion when it revoked Ms. Easley's probation?
5. Did the district court abuse its discretion when it failed to further reduce Ms. Easley's sentences *sua sponte* upon revoking probation?

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<sup>1</sup> This brief will only address the waiver issue, which pertains to all of the issues raised on appeal.

## ARGUMENT

### Ms. Easley Did Not Waiver Her Right To Appeal In Either Case

At oral argument held on December 5, 2013, this Court requested that Ms. Easley file a supplemental brief to address the appellate waivers contained in the plea agreements in both cases.

In the written plea agreement in docket number 39710, Ms. Easley agreed to waive the right to appeal her “judgment of guilty pursuant to CR 11(d).” (R., p.60.) This waiver is retrospective in nature and did not preclude her from appealing from the order revoking probation. Support for this proposition can be found in *State v. Thomas*, 146 Idaho 592, 593-94 (2008), where this Court held that an “order revoking probation is not a judgment.” As such, the plain language of Ms. Easley’s waiver in docket number 39710 only pertained to issues related to the original judgment and not any post-conviction orders, such as the order revoking probation which is currently on appeal.

In the written plea agreement in docket number 39711, Ms. Easley agreed to waive her right to appeal certain issues. The specific language of that waiver follows:

By accepting this offer the defendant waives the right to: (1) file a Rule 35 Motion (except as to an illegal sentence) and (2) appeal any issue regarding the conviction, including all matters involving the plea or the sentencing and any rulings made by the court. Including all suppression issues. However, the defendant may appeal the sentence if the Court exceeds the fixed portion of the State’s sentencing recommendation of the “Jail/Prison” terms set forth above.

(R., p.345.) This Court recently interpreted an appellate waiver with virtually identical language. In *State v. Straub*, 153 Idaho 882 (2013), the following waiver was at issue:

By accepting this offer the Defendant waives the right to appeal any issues regarding the conviction, including all matters involving the plea or sentencing *and any rulings made by the court*, including all suppression issues. Excepting however the Defendant may appeal the sentence if the Court exceeds the State's sentencing recommendation of the 'Jail/Prison terms' set forth above.

*Id.* at 886 (original emphasis). In that case, a restitution order was on appeal and the State argued, based on the foregoing waiver, that Straub had waived the right to appeal the restitution order. *Id.* at 886-887. The Idaho Supreme Court employed the following rationale in rejecting the State's argument:

[T]he word "made," as the past tense form of the verb "to make," refers to any rulings that the district court made prior to the agreement. Thus, the agreement neither contemplates nor has any effect on rulings that occurred after the plea agreement was reached. Since the restitution hearing and subsequent restitution order occurred after the plea agreement was signed, Straub has not waived his right to appeal the restitution order.

*Id.* at 887. The waiver language in this case uses the word "made" and, therefore, the agreement does not contemplate a waiver of any future rulings made by the district court, such as an order revoking probation, which is at issue on this appeal. Therefore, Ms. Easley did not waive her right to appeal the district court's order revoking probation.

Ms. Easley also argues, in the alternative, that the State missed its opportunity to assert that she waived her right to appeal. In *Oneida v. Oneida*, 95 Idaho 105 (1972), this Court held that the respondent in an appeal must file a motion to dismiss, *prior to the filing of the appellate briefing*, if it hopes to obtain dismissal of the appellant's appeal based on a waiver of appellate rights:

Relying upon the above-quoted oral stipulation, the respondents contend that the appellants waived their right to appeal the district court's order. As the appellants correctly point out, however, an objection based upon such a stipulation should be raised by a motion to dismiss the appeal. *Southern Indiana Power Co. v. Cook*, 182 Ind. 505, 107 N.E. 12 (1914); *Speeth v. Fields*, 71 N.E.2d 149 (Ohio App.1946) (per curiam); 4 Am.Jur.2d, Appeal and Error s 240 (1962); see *Phelps v. Blome*, 150 Neb. 547, 35 N.W.2d 93 (1948); cf. 4 Am.Jur.2d, Appeal and Error s 241 (1962). Raising such an objection at the earliest stage of appellate proceedings may spare the appellant further useless expenditures (for, e.g., an appeal bond, transcripts, and additional attorneys' fees). Having failed to move to



dismiss the appeal, the respondents are in no position to rely, in their appellate brief, upon the alleged waiver of the right to appeal.

*Id.* at 106-07 (footnotes omitted). As such, the State forfeited its ability to raise this as an issue on appeal.

In sum, both of the waivers in this case only relate to the original judgments of conviction in both cases and do not encompass the orders revoking probation which are currently on appeal. Alternatively, the State missed its opportunity to argue for the dismissal of this appeal.

### CONCLUSION

Since Ms. Easley did not waive the ability to appeal from the district court's orders revoking probation in both cases, she respectfully requests access to the requested transcripts and the opportunity to provide any necessary supplemental briefing raising issues which arise as a result of that review. In the event this request is denied, Ms. Easley respectfully requests that this Court remand this matter with instructions to consider placement into the Fifth Judicial District's mental health court. Alternatively, Ms. Easley respectfully requests that this Court remand this case with instructions to place her on probation. Alternatively, Ms. Easley respectfully requests that this Court reduce the length of the indeterminate portion of her sentences. Alternatively, Ms. Easley respectfully requests that this Court reduce the length of her sentences as it deems appropriate.

DATED this 17<sup>th</sup> day of December, 2013.



SHAWN F. WILKERSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17<sup>th</sup> day of December, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

KRYSTAL EASLEY  
INMATE #79463  
PWCC  
1451 FORE ROAD  
POCATELLO ID 83204

G RICHARD BEVAN  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

SAMUEL S BEUS  
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